IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1340 of 1989

with

FIRST APPEAL No 1338 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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CHINAR PRODUCTS

Versus

UPENDRA HIMATLAL

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Appearance:

1. First Appeal No. 1340 of 1989
   MR AMAR N BHATT for Appellant
   MR PR NANAVATI for Respondent No. 1
   ..... for Respondent No. 2
2. First Appeal No. 1338 of 1989
   MR MUKESH PATEL for Appellant
   MR PR NANAVATI for Respondent No. 1
   ..... for Respondent No. 2

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CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 29/10/2002

COMMON ORAL JUDGEMENT

1. The respondent no.1 in both the appeals was the plaintiff in Civil Suit No.1137 of 1982 in the City Civil Court, Ahmedabad. The appellant in First Appeal No.1340 of 1989 was the original defendant no.1 and the appellant in First Appeal No.1338 of 1989 was the original defendant no.2. The said suit was decreed and the appellants in these appeals were held jointly and severally liable to satisfy the decree. In First Appeal No.1340 of 1989, stay of execution of the decree was granted on condition that the appellant deposits the entire decretal amount and the respondent no.1 was permitted to withdraw the deposited amount on furnishing security. The learned counsel for respondent no.1 has filed an affidavit in which it is stated that pursuant to the said order granting conditional stay, the appellant in First Appeal No.1340 of 1989 had deposited the amount and the respondent no.1 withdrew the said amount on furnishing security. It is further stated in the affidavit that respondent no.1 has no further claim against the legal heirs of the deceased appellant who have been brought on record today and that the respondent no.1 shall not file any execution against them as well as against respondent no.2 who was the original defendant no.2 in the said suit, since the decree has been fully satisfied.

2. In this view of the matter, First Appeal No.1338 of 1989 filed by the defendant no.2 is allowed and the decree of the Trial Court against defendant no.2 is set aside. The learned counsel for the appellant in First Appeal No.1340 of 1989 seeks leave to withdraw the said appeal filed by the defendant no.1. Leave granted. The appeal is disposed of as withdrawn with no order as to costs. The security which has been furnished by the respondent no.1 in the form of a bank guarantee for withdrawing the amount deposited by the appellant will stand discharged.

( M.C. Patel, J. )

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